IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 23RD MARCH 2007 / 2ND CHAITHRA 1929

OP.No. 31612 of 2001(L)

PETITIONER:
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1. VINAYAKRISHNAN T.M., AGED 47 YEARS, DRAFTSMAN(GRADE I), KERALA WATER AUTHORITY, P.H. SUB DIVISION, KANNUR.

2. P.KUMARAN, AGED 43 YEARS, PEON, KERALA WATER AUTHORITY, P.H.CIRCLE, KANNUR.

3. C.VALSAN, AGED 49 YEARS, OPERATOR (HIGHER GRADE), KERALA WATER AUTHORITY, SECTION OFFICE, KOLACHERY.

BY ADV. SRI.M.SASINDRAN
SRI.K.MANOJ CHANDRAN

RESPONDENTS:
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1. STATE OF KERALA, REP. BY CHIEF SECRETARY TO GOVT. OF KERALA, SECRETARIAT, TRIVANDRUM.

2. THE DISTRICT REGISTRAR OF KANNUR AT THALASSERY, P.O.THALASSERY, KANNUR DIST.

3. THE SUB REGISTRAR, OFFICE OF THE SUB REGISTRAR, MATHAMANGALAM, KANNUR DIST.

4. .DO. .DO., ANJARAKANDY, KANNUR DIST.

5. .DO. , VALAPATTANAM, KANNUR DIST.

BY GOVERNMENT PLEADER SMT.SMITHA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 23/03/2007, THE COURT ON 23/03/2007 DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO.51512/2001 IN O.P. NO.31612/2001

DISMISSED:

23.3.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF G.O. DT.23.3.98.

P2: TRUE COPY OF THE PROCEEDINGS DT.1.6.2001 BY THE CHIEF ENGINEER, KERALA WATER AUTHORITY (NR), KOZHIKODE.

P3: .DO. DT.1.6.2001 .DO.

P4: .DO. DT.1.6.2001 .DO.

P5: TRUE COPY OF INTERIM ORDER DT.18.8.2001 IN CMP NO.38140/2001 IN O.P. NO.23240/2001.

TRUE COPY

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.31612 of 2001

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Dated this the 23rd day of March, 2007.

JUDGMENT

The petitioners availed loan from Water Authority as it's employees for house building. When loan was availed, stamp duty exemption was available to mortgage deeds executed by employees in favour of Water Authority which was issued by the Irrigation Department. However, petitioners had to approach this court for getting benefit of notification only because registering authority objected grant of exemption for the reason that exemption should have been granted by the Taxes Department. The argument of the registering authority is not tenable because the subsequent conduct of the Government in cancelling the exemption notification vide order dated 7.1.2002 proves beyond doubt that the Government accepted the authority of the Irrigation Department to issue the original notification. In any case when a similar situation arose in POURNAMI OIL MILL V. SECRETARY TO GOVERNMENT reported in 65 STC 1, Supreme Court held that notification issued by Industries Department serves the purpose for sales tax exemption provided under Section 10 of the KGST Act. Therefore, even if stamp duty exemption-notification was issued by another

Government Department, it certainly binds the Government. Since loan was availed by petitioners and documents were prepared at the time when exemption was available, petitioners are certainly entitled to stamp duty exemption for the documents proposed to be executed and in fact executed without stamp duty under interim orders of this court. This court has taken a similar view in the case of Water Authority employees in W.P.(C) No.3961/2005. Accordingly this O.P. is allowed directing the respondents not to recover any stamp duty from the petitioners for the mortgage deed executed by them in favour of Water Authority for availing housing loan. However, since exemption is withdrawn, stamp duty is payable for release deeds as and when executed by the Water Authority in favour of petitioners on repayment of debts.

C.N.RAMACHANDRAN NAIR
Judge

pms